United Nations CERD/C/KAZ/CO/6-7

International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined sixth and seventh periodic reports of Kazakhstan*

1. The Committee considered the sixth and seventh periodic reports of Kazakhstan (CERD/C/KAZ/6-7), submitted in one document, at its 2279th and 2280th meetings, held on 12 and 13 February 2014 (see CERD/C/SR.2279 and 2280). At its 2291st meeting, held on 20 February 2014 (see CERD/C/SR.2291), it adopted the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the sixth and seventh periodic reports of the State party, which were drafted in conformity with the Committee's reporting guidelines and addressed its previous concluding observations. The Committee also welcomes the regularity with which the State party submits its periodic reports.

3. The Committee expresses its appreciation for the oral presentation and responses by the high-level delegation of the State party to the Committee's questions and comments, and the opportunity thus provided to engage in a constructive and continuing dialogue.

II. Positive aspects

4. The Committee welcomes the following legislative and institutional steps taken by the State party towards the elimination of racial discrimination:

(a) Amendments to the Criminal Code (art. 141, para. 1) in 2011 to increase the criminal sanctions for violations of equal rights of citizens and for the use of torture;

(b) The adoption in 2011 of the Population Migration Act, which is aimed at providing social support to migrants and reducing illegal immigration;

(c) The enactment of the National Refugee Act in 2009 and Decision No. 183 of 9 March 2010 addressing, inter alia, the rules for granting, extending, withdrawing and rescinding refugee status;

* Adopted by the Committee at its eighty-fourth session (3–21 February 2014).

(d) The implementation of policies to help preserve minority languages, including through the establishment of schools with instruction in ethnic minority languages and the funding of ethno-cultural associations for the preservation of ethnic cultures and traditions, and minority language media;

(e) The implementation of the *Nurly Kosh* programme for the resettlement of ethnic Kazakhs (*Oralman*) for the period 2009-2011;

(f) The conduct by the Supreme Court of seminars and training missions for judges on human rights standards and international human rights obligations, in 2010 and 2011;

(g) The adoption of the Plan of Action for implementing the national unity doctrine of Kazakhstan for the period 2011-2014 and the National Human Rights Action Plan for the period 2009-2012.

5. The Committee welcomes the State party's ratification of or accession to the following international instruments:

(a) International Convention for the Protection of All Persons from Enforced Disappearance, on 27 February 2009;

(b) Optional Protocol to the International Covenant on Civil and Political Rights, on 30 June 2009;

(c) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 22 October 2008;

(d) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 31 July 2008.

III. Concerns and recommendations

Anti-discrimination legislation and its enforcement

6. While welcoming the adoption by the State party of legal provisions prohibiting racial discrimination, as contained in particular in the Constitution, Labour Code, Administrative Offences Code and Civil and Criminal Procedure Codes, the Committee reiterates its concern that the State party has not adopted comprehensive legislation to prevent and combat discrimination in all areas, including a definition encompassing both direct and indirect discrimination on the grounds of race and ethnic origin, which may lead to hindrances in access to justice for victims of racial discrimination (arts. 1, para. 1; 2, para. 1 (d); and 6).

Recalling its previous recommendation (CERD/C/KAZ/CO/4-5, para. 10), the Committee encourages the State party to continue its efforts to adopt a comprehensive anti-discrimination law, including a definition of direct and indirect discrimination, as stipulated in article 1, paragraph 1, of the Convention, in order to ensure effective access to justice and appropriate remedies for victims of racial discrimination. The Committee requests the State party to disseminate relevant information to the public, in particular to minorities, about what constitutes discrimination and about available legal remedies for persons facing racial discrimination.

Relevant statistical data

7. The Committee welcomes the efforts of the State party to compile statistical data, such as on the number and size of individual ethnic groups living in the country; however,

it is concerned about the limited information provided and at the absence of annual statistics on the social and economic situation of each of the ethnic groups with reference to education, employment, health and housing. The Committee is also concerned about the lack of data on the ethnic composition of the prison population and on the representation of ethnic minorities in the civil service (art. 2).

Drawing attention to the revised guidelines for reporting under the Convention (CERD/C/2007/1, paras. 10-12), and recalling its general recommendation No. 24 (1999) on reporting of persons belonging to different races, national/ethnic groups or indigenous peoples, the Committee recommends that the State party collect and publicize reliable statistical data on the social and economic situation of individual ethnic groups, disaggregated by areas where minority groups live in substantial numbers, in order to provide an adequate empirical basis for policies to enhance the equal enjoyment of rights under the Convention in Kazakhstan. The Committee also recommends that the State party collect data on the ethnic composition of the prison population and on the representation of minority groups in the civil service. The Committee requests the State party to provide it with such information in its next periodic report.

Special measures

8. While noting that the State party has taken steps to facilitate, inter alia, the representation of ethnic minorities in the Lower Chamber of the Parliament and education in ethnic minority languages in public schools, the Committee is concerned that special measures seem to be perceived by the State party as aimed at introducing "artificial inequality" or unequal or separate rights for different ethnic groups (arts. 1, para. 4; and 2, para. 2).

Recalling its general recommendation No. 32 (2009) on the meaning and scope of special measures, the Committee recommends that the State party amend its legislation to provide for the possibility of adopting special measures to promote equal opportunities and enhance strategies against inequality and discrimination, in accordance with article 1, paragraph 4, and article 2, paragraph 2, of the Convention.

Representation of minorities in political life and the civil service

9. The Committee is concerned about the underrepresentation of minorities, in particular non-Kazakh ethnic groups, in political life and decision-making at the municipal, district, regional and national levels, taking into account the 2012 elections data and the last census. Noting the electoral reforms of 2007 and the representation of minorities in the Assembly of the People of Kazakhstan (the People's Assembly), the Committee is concerned about the continuing limited participation of minorities, in particular in both Houses of Parliament, the Mazhilis and the Senate. The Committee is also concerned that the representation of ethnic minorities by nine deputies elected to the Mazhilis by the People's Assembly is not fully proportionate to the size of the ethnic minorities. The Committee is further concerned at reports about significant underrepresentation of non-Kazakh ethnic groups in the civil service (arts. 1, para. 4; 2, para. 2; and 5 (c) and (e) (i)).

Recalling its previous recommendations (CERD/C/KAZ/CO/4-5, paras. 11 and 12), the Committee encourages the State party to:

(a) Ensure a fair and adequate representation of minority groups in political life and decision-making bodies at all levels by, inter alia, adopting special measures;

(b) Establish in particular mechanisms for the election of members of the People's Assembly and of the deputies nominated to the Mazhilis by the People's

Assembly in order to allow for the fair representation of minority communities and due consultation with them on matters affecting their rights;

(c) Take effective measures to facilitate and increase the representation of non-Kazakh ethnic groups in the civil service, including by reviewing the occupational requirements for public sector jobs and limiting the requirement for mastery of the Kazakh language only to positions where it is essential;

(d) Provide data in its next periodic report, disaggregated by ethnic group, on the representation of minority groups in political bodies and decision-making positions, and in the civil service.

Commissioner for Human Rights

10. The Committee takes note of the functioning of the Commissioner for Human Rights and the National Centre for Human Rights, which supports the Commissioner in discharging his mandate. The Committee is concerned that (a) the Commissioner lacks adequate budgetary and human resources; (b) the mandate of the Commissioner excludes consideration of complaints against various State authorities; and (c) there have been no recent public reports on the Commissioner's work against racial discrimination (art. 2, para. 2).

Recalling its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate implementation of the Convention, the Committee recommends that the State party:

(a) Undertake legislative changes and strengthen the Commissioner's mandate to effectively promote human rights and fight against all forms of racial discrimination;

(b) Provide the Commissioner with adequate financial and human resources, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), annexed to General Assembly resolution 48/134 of 20 December 1993;

(c) Take steps to ensure that the Commissioner enjoys public confidence and full independence;

(d) Make public the reports on the Commissioner's work against racial discrimination on a regular basis.

Hate speech

11. While noting the information about the application of legislation against incitement to national, ethnic or racial enmity in several cases, the Committee expresses its concern at the absence of information about the measures taken to combat incidents of hate speech, in particular against non-citizens, including in the media and on the Internet (arts. 2, para. 1 (a) and (d); 4 (a), (b) and (c); and 7).

Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens and general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party effectively investigate and, as appropriate, prosecute and punish acts of hate speech and take appropriate measures to combat hate speech in the media and on the Internet, regardless of the status of the perpetrators. The Committee also recommends that the State party take further measures to promote tolerance, intercultural dialogue and respect for diversity, with a focus on the role of journalists and public officials in that regard.

Legislation against incitement to violence and extremist organizations

12. The Committee notes with concern that the State party's Criminal Code (arts. 164 and 337, para. 2) may not fully respond to the requirements of article 4 (a) and (b) of the Convention.

Drawing attention to its general recommendation No. 15 (1993) on article 4 of the Convention and general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party review its legislation so as:

(a) To prohibit incitement to violence against any group of persons on account of race, colour or ethnic origin;

(b) To declare illegal and prohibit all forms of organization and all propaganda activities that promote and incite racial hatred;

(c) To prohibit and punish participation in such organizations or activities, in line with article 4 (a) and (b) of the Convention.

Criminal legislation and freedom of expression

13. The Committee expresses its concern at the overly broad provisions of article 164 of the Criminal Code, such as on incitement to national, ethnic or racial enmity or discord, or insult to the national honour and dignity or religious feelings of citizens, which may lead to unnecessary or disproportionate interference with freedom of expression, including that of members of minority communities (arts. 4 and 5 (d) (viii)).

In the light of its general recommendation No. 15 (1993) on article 4 of the Convention and general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party clearly define criminal offences, in particular those in article 164 of the Criminal Code, so as to ensure that they do not result in unnecessary or disproportionate interference with freedom of expression, including that of members of minority communities.

Labour legislation

14. While noting that section 7, paragraph 2, of the Labour Code of 2007 covers the prohibited grounds of discrimination enumerated in article 1, paragraph 1, of the Convention, the Committee expresses its concern at the absence of prohibition of discrimination based on colour (arts. 1, para. 1, and 5 (e) (i)).

The Committee recommends that the State party consider amending the Labour Code in order to prohibit explicitly discrimination based on colour, in line with article 1, paragraph 1, of the Convention.

Migrant workers

15. While welcoming the adoption of the Population Migration Act of 2011, the Committee is concerned that the system of work permits and quotas for recruiting foreign workers, and Decree No. 45 of 13 January 2012, which introduced restrictions for sole traders based on Kazakh citizenship, are overly restrictive and may lead to discrimination, in violation of the Convention and of article 7, paragraph 1, of the Labour Code of Kazakhstan (art. 5 (e) (i)).

The Committee recommends that the State party:

(a) Take steps to facilitate the regularization of, and prevent any discrimination against, foreign workers by flexible application of the work permit and quota systems, while ensuring fair competition in their recruitment;

(b) Consider amending the Population Migration Act of 2011 and related regulations to ensure that the requirements to become a sole trader are not overly restrictive and do not discriminate on the grounds set out in article 1, paragraph 1, of the Convention and those that are prohibited in the State party's legislation.

16. The Committee is concerned about the irregular status of many migrant workers in the country, who have limited access to public services and whose children are often denied access to education, and to medical treatment other than in emergencies. The Committee is also concerned about the absence of disaggregated data on migrant workers, who are often at risk of violence, extortion and trafficking of human beings (art. 5 (e) (iv) and (v)).

The Committee recommends that the State party:

(a) Take special measures to ensure that migrant workers and their families enjoy equal access to education, health care and other essential public services, including social insurance;

(b) Compile disaggregated data on all categories of migrant workers and on their enjoyment of their rights;

(c) Strengthen measures to prevent incidents of violence, extortion and trafficking against migrant workers and prosecute and punish perpetrators of such acts;

(d) Consider acceding to International Labour Organization Convention No. 143 (1975) concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers.

Education

17. While noting with appreciation the growing quality of education in and the study of minority languages, and the number of schools, textbooks and qualified staff involved, the Committee is concerned that the numbers of ethnic minority students, at all levels of education, who receive instruction in and study ethnic minority languages remain low compared to the ratio of minorities in the overall population, which amounts to around 35 per cent. The Committee is particularly concerned that minorities account for only 7.8 per cent of students in higher education institutions (arts. 5 (e) (v); and 7).

The Committee recommends that the State party:

(a) Take additional measures to increase access for children from ethnic minorities to instruction in and study of their mother tongue, including through the establishment of schools and the provision of textbooks in minority languages and of adequate professional staff;

(b) Adopt special measures to ensure improved access to higher education for students from all ethnic groups without discrimination.

Refugees and asylum seekers

18. While noting the adoption in December 2009 of the Law on Refugees, which implements the principle of non-refoulement and enhances the transparency and accessibility of the refugee determination procedure, the Committee is concerned at the absence of a practical mechanism for the referral of refugees between the Migration Police

Departments and the Border Guard Service, which may lead to the protracted detention of asylum seekers without their having access to the territory of the State party and may increase the risk of their refoulement (arts. 2 and 5).

The Committee recommends that the State party ensure that standardized asylum procedures are implemented and establish a referral procedure for the Migration Police Departments and the Border Guard Service at all border points, including international airports and transit zones, in compliance with international norms and standards, in particular the principle of non-refoulement.

Stateless persons

19. The Committee is concerned about the absence of data concerning the number of stateless persons and persons at risk of statelessness because of lack of documentation, and of information about the situation of stateless persons (arts. 2 and 5).

The Committee recommends that the State party:

(a) Take measures to address statelessness;

(b) Provide data in its next periodic report on the acquisition of Kazakh citizenship and the number of persons who lack valid identity documents, as well as the exact number of stateless persons and of persons at risk of statelessness, including their ethnic origin;

(c) Take measures to ensure that the State party's laws concerning the acquisition of Kazakh nationality do not increase the number of stateless persons;

(d) Consider acceding to the 1961 Convention on the Reduction of Statelessness, as a matter of priority.

Roma

20. While noting the information provided by the State party on the situation of the 4,065 Roma living in Kazakhstan, including the reported absence of complaints by Roma concerning racial discrimination, the Committee is concerned about the lack of detailed information on the enjoyment by Roma of their rights under the Convention, in particular as regards their access to employment, education, health, housing and services (arts. 2, paras. 1 (c) and 2; 3; and 5 (e) (i), (iii), (iv) and (v)).

In the light of its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party take special measures to alleviate the reportedly precarious socioeconomic situation of Roma, ensuring their enjoyment of economic, social and cultural rights without prejudice or stereotyping, and provide Roma victims of discrimination with effective access to remedies. The Committee also recommends that the State party submit updated information on the enjoyment of economic, social and cultural rights by Roma in its next periodic report.

Access to remedies and direct applicability of the Convention

21. The Committee notes with concern the low number of complaints and the absence of court decisions in administrative, civil and criminal proceedings on acts of racial discrimination, which are indicative of a lack of practical remedies for victims of such acts. While noting the reaffirmation by the State party of the direct applicability of the Convention in its domestic legal order, the Committee also notes with concern the absence of information on cases in which the Convention was applied by judicial and administrative bodies. Moreover, the Committee notes with concern the low number of cases in which discrimination was established by the Commissioner for Human Rights, as compared to the

number of complaints of racial discrimination received, and the lack of support measures for victims to litigate in discrimination cases (arts. 1, para. 1; 2, para. 1 (d); 4; and 6).

Recalling its general recommendation No. 26 (2000) on article 6 and general recommendation No. 31 (2005) on prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party:

(a) Ensure effective remedies, including just and adequate reparation or satisfaction, through the competent national courts and other State institutions for any act of racial discrimination, by making appropriate use of the anti-discrimination legislation;

(b) Provide the Committee with data on the application of the Convention through judicial and administrative decisions in its next periodic report;

(c) Undertake a thorough analysis of the reasons for the low number of cases in which discrimination was established by the Commissioner for Human Rights and ensure that the Commissioner effectively investigates all complaints of racial discrimination;

(d) Implement measures to strengthen the legal aid system and provide assistance to individuals and associations to facilitate litigation in discrimination cases;

(e) Undertake training of public officials, including law enforcement officials, members of the judiciary and lawyers, concerning legal protection and safeguards against racial discrimination, drawing attention to the Committee's general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights.

IV. Other recommendations

Ratification of other treaties

22. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education 1960.

Follow-up to the Durban Declaration and Programme of Action

23. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

Consultations with organizations of civil society

24. The Committee recommends that the State party expand its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to the present concluding observations.

Amendments to article 8, paragraph 6, of the Convention

25. The Committee reiterates its recommendation contained in the previous concluding observations that the State party ratify the amendment to article 8, paragraph 6, of the Convention adopted on 15 January 1992 at the fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the Assembly strongly urged States parties to accelerate their national ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Dissemination

26. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

27. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 8, 15 and 18 above.

Paragraphs of particular importance

28. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 12, 19 and 21 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.

Preparation of the next periodic report

29. The Committee recommends that the State party submit its eighth to tenth periodic reports, in a single document, by 25 September 2017, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60 to 80 pages for the common core document (see HRI/GEN.2/Rev.6, chap. I, para. 19).